

REMARKS/ARGUMENTS

The Office is requiring restriction under 35 U.S.C. § 121 as follows:

Group I: Claims 53, 61, 73 and 81, drawn to a method of generating tissue in a patient and a method of providing a therapeutic benefit to a patient, each comprising culturing **hepatocytes** in a liquid culture medium for a time sufficient to obtain lineage committed cell with enhanced biological function and transferring said cultured cells into said patient;

Group II: Claims 53, 61, 73 and 81, drawn to a method of generating tissue in a patient and a method of providing a therapeutic benefit to a patient, each comprising culturing **neural cells** in a liquid culture medium for a time sufficient to obtain lineage committed cell with enhanced biological function and transferring said cultured cells into said patient;

Group III: Claims 53, 61, 73 and 81, drawn to a method of generating tissue in a patient and a method of providing a therapeutic benefit to a patient, each comprising culturing **epithelial cells** in a liquid culture medium for a time sufficient to obtain lineage committed cell with enhanced biological function and transferring said cultured cells into said patient;

Group IV: Claims 53, 61, 73 and 81, drawn to a method of generating tissue in a patient and a method of providing a therapeutic benefit to a patient, each comprising culturing **keratinocytes** in a liquid culture medium for a time sufficient to obtain lineage committed cell with enhanced biological function and transferring said cultured cells into said patient;

Claims 53, 61, 73 and 81, drawn to a method of generating tissue in a patient and a method of providing a therapeutic benefit to a patient, each comprising culturing **endothelial cells** in a liquid culture medium for a time sufficient to obtain lineage committed cell with enhanced biological function and transferring said cultured cells into said patient;

Group VI: Claims 53-55, 61-63, 73-75 and 81-83, drawn to a method of generating issue in a patient and a method of providing a therapeutic benefit to a patient, each comprising culturing **mesenchymal** cells in a liquid culture medium for a time sufficient to obtain lineage committed cell with enhanced biological function and transferring said cultured cells into said patient.

In addition, upon choosing Group IV, the Office has required a selection of a species of mesenchymal cell from those listed in Claims 55, 63, 75 or 83. Applicants have made their election. Claims 46-86 read on the elected species.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. MPEP §803.

The Restriction Requirement is untenable in light of the fact adequate reasons and/or examples have not been provided to support a conclusion of patentable distinctness between the identified groups.

Further, Applicants respectfully traverse the Restriction Requirement on the grounds that the Office has not shown that a burden exist in searching all of the claims. Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Applicants have made their election but traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, the restriction is improper, and Applicants' election of species is for examination purposes only.

Applicants respectfully submit that the Office has not shown that a serious burden exists in searching the entire application. Evidence that there is no burden in examining the entire set of pending claims lies in the fact that the Office has already issued an action on the merits.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Withdrawal of the Election of Species Requirement is respectfully requested.

An action on the merits is requested.

Respectfully submitted,

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